

WORKERS' COMPENSATION DIVISION[876]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 86.8, the Workers' Compensation Commissioner hereby amends Chapter 4, "Contested Cases," Iowa Administrative Code.

Item 1 provides that the agency may deliver notices, orders, rulings and decisions in contested case proceedings by E-mail. Items 2 to 4 specify that the agency filing fee is \$100 for filing certain original notice and petitions in contested case proceedings.

In compliance with Iowa Code section 17A.4(3), the Division of Workers' Compensation finds that notice and public participation prior to adoption of these amendments are unnecessary and contrary to the public interest, as Item 1 serves the public interest by allowing the agency to deliver notices, orders, rulings and decisions in contested case proceedings by E-mail, and Items 2 to 4 are intended to implement legislation.

The Division also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these amendments should be waived and the amendments should be made effective on July 1, 2009, as the amendments confer a benefit to parties to a contested case proceeding by allowing for utilization of E-mail technology which will enhance the delivery of notices, orders, rulings and decisions in contested case proceedings and by informing parties the amount of the filing fee.

The Division has determined that these amendments will have no impact on small business within the meaning of Iowa Code section 17A.4A.

The Division has determined that these amendments will not necessitate additional annual expenditures exceeding \$100,000, or \$500,000 within five years, by political subdivisions or agencies which contract with political subdivisions within the meaning of Iowa Code section 25B.6. Therefore, no fiscal impact statement accompanies this rule making.

These amendments do not include a waiver provision because rule 876—12.4(17A) provides the specified situations for waiver of Workers' Compensation Division rules.

These amendments are also published herein under Notice of Intended Action as **ARC 7819B** to allow for public comment.

These amendments are intended to implement Iowa Code sections 17A.12 and 85.3 and 2009 Iowa Acts, Senate File 469, section 15, as amended by 2009 Iowa Acts, Senate File 478, section 194.

These amendments will become effective July 1, 2009.

The following amendments are adopted.

ITEM 1. Amend rule 876—4.7(86,17A) as follows:

876—4.7(86,17A) Delivery of notice, orders, rulings and decisions. Delivery of the original notice shall be made by the petitioning party as provided in Iowa Code section 17A.12(1) except that a party may deliver the original notice on a nonresident employer as provided in Iowa Code section 85.3. A proposed or final decision, ~~or~~ order or ruling may be delivered by the division of workers' compensation to any party by regular mail. On or after July 1, 2009, a proposed or final decision, order or ruling may be delivered by the division of workers' compensation to any party by E-mail.

This rule is intended to implement Iowa Code sections 85.3 and 17A.12.

ITEM 2. Amend paragraph **4.8(2)"a"** as follows:

a. ~~On or after July 1, 1988, for~~ For all original notices and petitions for arbitration or review-reopening relating to weekly benefits filed on account of each injury, gradual or cumulative injury, occupational disease or occupational hearing loss alleged, a filing fee ~~of \$65~~ shall be paid at the time of filing. The filing fee for original notices and petitions filed on or after July 1, 1988, but before July 1, 2009, is \$65. The filing fee for petitions filed on or after July 1, 2009, is \$100. No filing fee is due for the filing of other actions where the sole relief sought is one of the following or a combination of any of them: medical and other benefits under Iowa Code section 85.27; burial benefits,

Iowa Code section 85.28; determination of dependency, Iowa Code sections 85.42, 85.43, and 85.44; equitable apportionment, Iowa Code section 85.43; second injury fund, Iowa Code sections 85.63 to 85.69; vocational rehabilitation benefits, Iowa Code section 85.70; approval of legal, medical and other fees under Iowa Code section 86.39; commutation, Iowa Code sections 85.45 to 85.48; employee's examination, Iowa Code section 85.39; employee's examination or sanctions, Iowa Code section 85.39; application for alternate care, Iowa Code section 85.27; determination of liability, reimbursement for benefits paid and recovery of interest, Iowa Code section 85.21; interest, Iowa Code section 85.30; penalty, Iowa Code section 86.13; application for approval of third-party settlement, Iowa Code section 85.22; and petitions for declaratory orders or petitions for interventions filed pursuant to 876—Chapter 5. An amendment to a petition that was filed on or after July 1, 1988, that alleges an additional or alternate date of occurrence does not require payment of an additional filing fee if a filing fee was paid when the petition was filed.

ITEM 3. Amend paragraph **4.8(2)“b”** as follows:

b. One filing fee of ~~\$65~~ shall be required for as many original notices and petitions as are filed on the same day on account of one employee against a single alleged employer or against entities alleged to be employers in the alternative or alleged to be dual employers. If filing fees have been overpaid, the amount overpaid shall be refunded to the party who made the overpayment.

ITEM 4. Amend paragraph **4.8(2)“e”** as follows:

e. If the correct filing fee or fees are not paid at the time of filing of the original notice and petition, the workers' compensation commissioner shall enter an order requiring payment of the correct filing fee or fees. If the required correction is not made by a date specified in the order, the original notice and petition shall automatically be dismissed without prejudice without entry of further order. See rule 876—4.36(86). If correction is made within the specified time, the initial filing shall be sufficient to have tolled the statute of limitations.

If no filing fee is paid at the time of filing of the original notice and petition, the workers' compensation commissioner shall return the original notice and petition to the party filing it. Filing an original notice and petition without paying the fee shall not toll the statute of limitations. Tendering an amount less than ~~\$65~~ required will be considered failure to pay a filing fee.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/3/09.